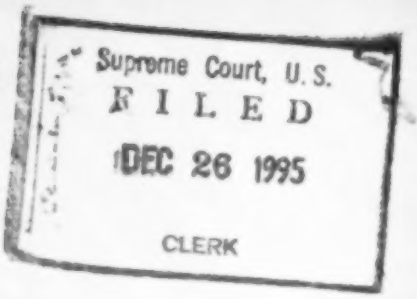
(1) 95-1101




No. _____

**IN THE SUPREME COURT OF THE UNITED STATES**

October Term, 1996

**WILLIAM P. WILSON,** *Petitioner,*

*v.*

**STATE OF WASHINGTON,** *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

**Peter Meyers**
King County Prosecutor
701 5th Avenue, #4800
Seattle, Washington 98104
(206) 296-8820
*Counsel for Respondent*

**Joan E. Neuffer**
Attorney at Law
2155 112th Avenue NE, Suite 200
Bellevue, Washington 98004
(206) 462-9394
*Counsel for Petitioner*

29PP

## QUESTIONS PRESENTED

William P. Wilson was charged with assault in the fourth degree. On the day of trial, Mr. Wilson entered into a "Stipulation to Facts Sufficient" arrangement. Mr. Wilson's attorney informed him that by signing the stipulation he would avoid a criminal conviction. The trial court reviewed the police report pursuant to the stipulation and entered a finding of guilt. The trial court did not engage in any inquiry with Mr. Wilson to insure that the stipulation was entered into knowingly and voluntarily. The issues are:

1. Whether the trial judge's failure to insure the stipulation was entered into knowingly and voluntarily violated Mr. Wilson's Sixth Amendment right to be confronted with the witnesses against him.

2. Whether the stipulation should be set aside based upon ineffective assistance of counsel.

## TABLE OF CONTENTS

QUESTIONS PRESENTED . . . . . 1
OPINIONS BELOW . . . . . 6
JURISDICTION . . . . . 6
CONSTITUTIONAL PROVISION INVOLVED . . . . 7
STATEMENT OF THE CASE . . . . . 8
FEDERAL QUESTION RAISED BELOW . . . . . 13
REASONS FOR GRANTING THE WRIT . . . . . 14

I. A conflict exists between the decisions of the states on whether a trial judge must make sure that a stipulation is entered into knowingly and voluntarily in the same manner as required for a plea of guilty . . . . . 14

II. The failure of Mr. Wilson's attorney to inform him of the consequences of entering into a stipulation amounted to ineffective assistance of counsel . . . . . 23

CONCLUSION . . . . . 27
APPENDIX . . . . . by separate cover

## TABLE OF AUTHORITIES

**Case Law:**


Boykin v. Alabama, 395 U.S. 238 (1969) . . . . . 16, 18

Brookhart v. Janis, 384 U.S. 1 (1966). . . . . 20, 21

Bunnell v. Superior Court of Santa Clara County, 531 P.2d 1086 (Cal. 1975). . . . . 18

Hill v. Lockhart, 474 U.S. 52 (1985). . . . . 24

In Re Mosley, 464 P.2d 473 (Cal 1970) . . . . . 20, 21

Johnson v. Zerbst., 304 U.S. 458 (1938) . . . . . 16

Matter of Montoya, 744 P.2d 340 (Wash. 1987) . .17

McCarthy v. United States, 394 U.S. 459 (1969) .16

North Carolina v. Alford, 400 U.S. 25 (1970) . . . 13, 17, 25

**People v. Correa**, 485 N.E. 2d 307 (Ill. 1985). . . 24

**People v. Smith**, 319 N.E.2d 760 (Ill. 1974) . . . . 18

**State v. Avila**, 617 P.2d 1137 (Ariz. 1980) . . . . . 18

**State v. Johnson**, 705 P.2d 773 (Wash. 1985). . . 14, 18

**State v. Stowe**, 858 P.2d 267 (Wash.App. 1993). .13, 14, 24, 25

**Strickland v. Washington**, 466 U.S. 668 (1984). .13, 23

**United States v. Russell**, 686 F.2d 35 (D.C.Cir. 1982) 24, 25

**Constitutional Provisions:**
U.S. Const. amend. VI. . . . . 7, 13, 15

**Court Rules:**
Fed. R. Crim. Proc. 11. . . . . 17
Wash. CrRLJ 4.2 . . . . . 17

**IN THE SUPREME COURT OF THE UNITED STATES**

October Term, 1996

**WILLIAM P. WILSON,** *Petitioner,*

*v.*

**STATE OF WASHINGTON,** *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

The petitioner, William P. Wilson, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Superior Court for the State of Washington in and for the County of King, entered in the above-entitled proceeding on December 5, 1994.

## OPINIONS BELOW

The decision of the Superior Court for the State of Washington in and for the County of King has not been reported but a transcription of the oral decision is reprinted in the Appendix hereto.

The decisions of the Court of Appeals of the State of Washington, Division One, denying discretionary review have not been reported but are reprinted in the Appendix hereto.

The decisions of the Supreme Court of Washington denying discretionary review have not been reported but are reprinted in the Appendix hereto.

## JURISDICTION

The decision of the Superior Court for the State of Washington, County of King, was entered on December 5, 1994, affirming the District Court's finding of guilt and denying petitioner's Motion to Vacate Finding and Reinstate

Jury Trial. The commissioner for the Court of Appeals denied a timely Motion for Discretionary Review on April 3, 1995. On June 2, 1995, a panel of three judges from the Court of Appeals denied petitioner's Motion to Modify their commissioner's decision. The commissioner for the Supreme Court for the State of Washington denied a timely Motion for Discretionary review of the Court of Appeals decision to deny review on August 11, 1995. On October 4, 1995, a panel of five judges for the Supreme Court denied petitioner's Motion to Modify their commissioner's ruling.

The jurisdiction of this Court to review the judgment of the Superior Court is invoked under 28 U.S.C §1257(3).

## CONSTITUTIONAL PROVISION INVOLVED

*U.S. Const., Amend. VI*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law,

and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

## STATEMENT OF THE CASE

On October 21, 1993, Mr. Wilson was arraigned on a charge of assault in the fourth degree. On the day in question, Mr. Wilson and his wife, Jenny, became involved in an argument which escalated and resulted in the assault charge against Mr. Wilson. The parties were involved in divorce proceedings at the time. There were no other witnesses to the incident.

After learning of the charge against him, Mr. Wilson hired Mr. Phillip Miller to represent him. On the day of trial, January 13, 1994, Mr. Wilson and his attorney appeared; however, the state's witnesses were not present and/or ready to proceed to trial. Nevertheless, Mr. Miller and the prosecuting attorney chose to proceed by way of Stipulation

to Facts Sufficient, (hereinafter referred to as "stipulation") sometimes imprecisely and incorrectly referred to as an *"Alford plea"* in local district court practice. **See A-1, Stipulation.**

Mr. Miller advised Mr. Wilson to sign the stipulation, but did not explain the terms and effect of such an arrangement. Mr. Wilson was not advised that signing the stipulation would most likely result in a finding of guilt and that, as a result, he would carry a criminal conviction on his record. In fact, it was Mr. Wilson's understanding that by signing the document he would **avoid** a conviction, and only be required to attend and complete anger management counseling. Although Mr. Wilson's signature appears on the stipulation form, he did not understand or agree to proceed with the plea, and did not agree to the sentencing conditions printed on the form.

On the day of trial, the Honorable Pro Tem Judge Rusden presided. The record below indicates that Judge Rusden understood that Mr. Wilson was stipulating that there were

facts sufficient to enter a finding of guilt. Judge Rusden stated,

> *. . . I have previously reviewed the police report and [am] satisfied that there is sufficient evidence contained therein to make a finding of guilty.*

**See A-2, Record of Proceedings, page 2.**

The court docket also indicates, "*Defendant stipulated to facts sufficient to enter a finding of guilty.*"

Pro Tem Judge Rusden made no attempt to explain to Mr. Wilson the ultimate effect of entering into the stipulation, specifically, that he was giving up his right to a trial, his right to cross-examine witnesses, and that, in all probability, the court would enter a finding of guilt based on the stipulation, which would result in a criminal conviction. **See A-2, Record of Proceedings.**

After reviewing the police reports, the court entered a finding of guilt and ordered a deferred sentence for 18 months, with conditional requirements that Mr. Wilson pay a fine, attend and complete anger management classes, have no subsequent violations of the law and comply with the terms of his probation. **See A-1, Stipulation.**

Following sentencing, Mr. Wilson obtained the undersigned counsel and subsequently filed a Motion to Vacate Finding and Reinstate Right to Jury Trial. On May 19, 1994, the Honorable Judge Pro Tem Sullivan denied the motion to vacate the conviction, but ruled that Mr. Wilson could perfect an appeal of the conviction within 14 days of his decision.

On June 1, 1994, Mr. Wilson appealed to the King County Superior Court. On December 5, 1994, a hearing was held before the Honorable Judge Ricardo Martinez. Judge Martinez affirmed the trial court's finding of guilt. **See A-3, Decision on RALJ Appeal.**

On December 30, 1994, Mr. Wilson sought discretionary review of the trial court's decision to the Court of Appeals, Division One. On April 3, 1995, Court Commissioner James M. Verellen denied Mr. Wilson's Motion for Discretionary Review. **See A-4, Commissioner's Ruling Denying Review.** Mr. Wilson then filed a Motion to Modify the commissioner's ruling and on June 2, 1995, a panel of three judges of the Court of Appeals denied the motion. **See A-5, Judge's Ruling Denying Motion.**

Mr. Wilson then sought discretionary review by the Washington State Supreme Court of the Court of Appeals' refusal to review Judge Martinez's decision. On August 11, 1995, the Commissioner for the Supreme Court denied the motion and refused to review the decision. **See A-6, SC Commissioner's Ruling Denying Review.** Mr. Wilson then made a Motion to Modify the commissioner's ruling. On October 4, 1995, this motion was denied. **See A-7, SC Judge's Ruling Denying Review.**

## FEDERAL QUESTION RAISED BELOW

The constitutional rights afforded Mr. Wilson under the Sixth Amendment of the United States Constitution were raised at every level of the state court appeal process.

Mr. Wilson, in his briefing and oral argument before the King County Superior Court, cited **Strickland v. Washington**, 466 U.S. 668 (1984), in support of his claim of ineffective assistance of counsel. Mr. Wilson also relied upon **State v. Stowe**, 858 P.2d 267 (Wash. 1993), which interpreted the Court's decision in **North Carolina v. Alford**, 400 U.S. 25 (1970) with respect to *Alford* pleas and constitutional rights afforded defendants when entering "straight" guilty pleas. Mr. Wilson also made reference to state law and local rules of procedure at the District Court trial level.

At the Court of Appeals level, Mr. Wilson reiterated his Sixth Amendment claims under **Strickland** (supra) and **Alford**, (supra) and incorporating and distinguishing

Washington state decisions under Stowe (supra) and State v. Johnson, 705 P.2d 773 (Wash. 1985), with respect to the rights afforded defendants on guilty pleas.

At the Washington State Supreme Court, Mr. Wilson again raised the Sixth Amendment issue on the same grounds and case law authority.

## REASONS FOR GRANTING THE WRIT

### I.

**A conflict exists between the decisions of the states on whether a trial judge must make sure that a stipulation is entered into knowingly and voluntarily in the same manner as required for a plea of guilty.**

It is the fundamental constitutional right of a person accused of a crime to plead not guilty to the charge and have a trial by a jury of his peers wherein he can defend himself by confronting and cross-examining witnesses against him and by

presenting witnesses in his own behalf. **U.S. Const. Amend. VI.**

A defendant may waive this right in whole or in part. However, because of the important and fundamental nature of these rights, it cannot be presumed that a waiver is made knowingly and voluntarily from a silent record, as we have in this case. One example of such a waiver occurs where a defendant pleas guilty to the charges against him. In the context of guilty pleas, this Court stated:

> *A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process clause, it must be 'an intentional abandonment of a known right or*

> *privilege.'* **Johnson v. Zerbst**, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. See **McCarthy v. United States**, 394 U.S. 459 (1969).

This Court clarified this issue further in **Boykin v. Alabama**, 395 U.S. 238 (1969). In **Boykin**, the defendant pleaded guilty to the charge of common law robbery. There was no evidence on the record that the judge questioned the defendant or that the defendant addressed the Court. The Court held that when a defendant enters a plea of guilty, the trial judge must make sure that he has a full understanding of what the plea connotes and its consequences. The trial court must question the defendant on the record to ensure that the defendant is entering his plea knowingly and voluntarily. **Id.** This requirement has been codified in various criminal procedure rules requiring the court to canvass the accused on the record as to the import and consequences of a proposed

guilty plea. See, e.g. Wash. CrRLJ 4.2; Fed. R. Crim. Proc. 11.

Similarly, when a defendant enters an *Alford plea*, the court is under a duty to insure that the plea is voluntary, knowing and intelligent. North Carolina v. Alford, 400 U.S. 25 (1970).

In an *Alford plea*, a defendant pleads guilty without admitting guilt. The defendant usually does this because he is either unable to admit guilt or wishes to take advantage of a plea bargain offered by the prosecutor. The trial judge must then determine that the state has sufficient evidence to present a prima facie case - the factual basis for the plea. This is usually done by reviewing the police report. In the case of an *Alford plea*, it is the responsibility of the trial judge to canvass the defendant on the record with regard to the decision to enter into the arrangement. See Matter of Montoya, 744 P.2d 340 (Wash. 1987). This requirement insures that reviewing courts are not left to second guess whether the defendant's decision is voluntary and knowing in the face of a

barren record. When the judge discharges that function, *"he leaves a record adequate for any review that may later be sought . . . and forestalls the spin-off of collateral proceedings that seek to probe murky memories."* **Boykin**, at 244.

Courts are divided, however, over whether the safeguards which are applicable to the acceptance of guilty pleas and *Alford* pleas must be provided to a defendant who submits the case to the judge on the basis of a stipulation as to certain evidence. **See Bunnell v. Superior Court of Santa Clara County**, 531 P.2d 1086 (Cal. 1975)(holding safeguards are applicable); **State v. Johnson**, 705 P.2d 773 (Wash. 1985)(holding safeguards inapplicable); **People v. Smith**, 319 N.E.2d 760 (Ill. 1974)(holding safeguards applicable); **State v. Avila**, 617 P.2d 1137 (Ariz. 1980)(holding safeguards inapplicable).

A typical stipulation occurs when the defendant stipulates to the police report and allows the Judge to make a finding of guilt or innocence based on the report. A

defendant who enters into such a stipulation waives the right to present evidence and witnesses on his own behalf and to cross-examine the witnesses against him. Like an *Alford plea*, the court ensures that there is a factual basis for a finding of guilt by reviewing the police report.

A stipulation under circumstances such as Mr. Wilson's is effectively tantamount to a plea of guilty. In fact, the distinction between a stipulation and an *Alford plea* has become so blurred that the terms are often used interchangeably by both attorneys and judges. The two procedures are essentially treated identically. For example, Mr. Wilson's stipulation was recorded in the court docket as *"Defendant stipulated to facts sufficient to enter a finding of guilty."* [emphasis added]. The trial judge reviewed the police report, just as he would have if an *Alford plea* had been entered, and after reviewing the report, entered a finding of guilt.

The United States Supreme Court has never reached the issue of whether the safeguards required for guilty pleas and

*Alford* pleas should be put in place for stipulations. However, in **Brookhart v. Janis**, 384 U.S. 1 (1966), the Court considered a very similar issue.

In **Brookhart**, an Ohio defendant was charged with forgery. The defendant entered a plea of not guilty and was appointed counsel. On the day of trial, the matter was submitted on a "prima facie case" - a procedure in Ohio whereby the defendant apparently agrees that he will be found guilty if the prosecution can produce legally sufficient evidence of guilt. Under the Ohio procedure, the defendant also agrees that he will neither present his own witnesses nor cross-examine the prosecution's witnesses. In **Brookhart**, the defendant specifically stated on the record that in no way was he pleading guilty to the charge. **Id.**, cited in **In Re Mosley**, 464 P.2d 473 (1970) at 477. In response to the defendant's statement, the trial court questioned the defendant as to exactly how he wished to proceed. The defendant's attorney affirmed that they were seeking only the prima facie procedure and not a full trial. This Court

characterized the prima facie case procedure in **Brookhart** as *"the practical equivalent of a plea of guilty."* **Id.** The Court reasoned that because a defendant's agreement to the prima facie procedure amounted to a plea of guilty, the same safeguards in place for guilty pleas should apply to Ohio's prima facie procedure. **Id.** at 481. The Court held that the record did not indicate that the client had voluntarily waived his right to a full trial and, as a result, the guilty verdict was unconstitutionally obtained. **Id.** at 478.

The stipulation entered into by Mr. Wilson has many of the same elements as the constitutionally impermissible procedure at issue in **Brookhart**. Mr. Wilson's stipulation still required the prosecution to prove that a crime had been committed. However, Mr. Wilson waived his right to produce witnesses on his own behalf and to cross examine the witnesses against him. Even more dramatic than the defendant in **Brookhart**, Mr. Wilson also waived the requirement that the state actually produce a witness for live testimony. The stipulation limited the evidence considered by the trial judge to the bare, written police report, and was, for

all intents and purposes, the practical equivalent of a plea of guilty. Because the practical effect of a stipulation is the same as a plea of guilt, the constitutional safeguards put in place by this Court in the context of guilty pleas should be made equally applicable to stipulations.

With the steady increase in the number of criminal cases being brought, the stipulation procedure has become an increasingly common method of resolving criminal matters short of trial. However, the confusion in the states' interpretation of the requirements of the Sixth and Fourteenth amendments has resulted in conflicting procedures from state to state. States which have held that no safeguards apply to stipulations are directly at odds not only with other states, but with the previous decisions of this Court and the constitutional safeguards of the Sixth amendment.

Because of the differing standards between the states, and because Mr. Wilson was not afforded rights other defendants in the same situation have been given, consideration of this matter by this Court is essential.

## II.

**The failure of Mr. Wilson's attorney to inform him of the consequences of entering into a stipulation amounted to ineffective assistance of counsel.**

The test for ineffective assistance of counsel is whether (1) defense counsel's performance fell below and objective standard of reasonableness, and (2) whether this deficiency prejudiced the defendant. **Strickland v. Washington**, 466 U.S. 668 (1984). As to the first prong, there is a strong presumption of adequate assistance of counsel. **Id.** at 689. As to the second, there must be a showing that there is "a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different." **Id.** at 694.

The primary role of an attorney representing a criminal defendant is to insure his client makes informed decisions. For example, the attorney must make sure that the defendant enters into plea negotiations or other agreements knowingly

and voluntarily. **Hill v. Lockhart**, 474 U.S. 52 (1985). Where an attorney affirmatively misinforms his client of the consequences of a plea or other agreement, the attorney's performance falls below an objective standard of reasonableness. **United States v. Russell**, 686 F.2d 35 (D.C.Cir. 1982); **People v. Correa**, 485 N.E. 2d 307 (Ill. 1985)(counsel's erroneous misrepresentation that a guilty plea would not affect defendant's immigrant status was ineffective assistance and rendered guilty plea involuntary); **State v. Stowe**, 858 P.2d 267 (Wash.App. 1993)(counsel's erroneous misrepresentation that *Alford plea* would not result in defendant's discharge from the Army was ineffective assistance of counsel).

An attorney's misrepresentation as to the outcome of an agreement to submit the case to the judge on the basis of stipulated evidence is particularly problematic. A defendant may voluntarily, knowingly and understandingly agree to submit his case to the trial judge based on stipulated evidence, even if he is unwilling to acknowledge his involvement in a

crime. See, e.g. North Carolina v. Alford, 400 U.S. 25, 37 (1970). However, when such a defendant learns that his stipulation will have consequences of an unquestionably serious nature, and thus rapidly changes his calculations about the costs and benefits of waiving his right to trial, it may be manifestly unjust to hold the defendant to his earlier bargain. Russell, 686 F.2d at 40; Stowe, 858 P.2d at 270.

In this case, Mr. Wilson steadfastly maintained his innocence throughout the criminal proceedings. Mr. Wilson agreed to sign the stipulation based on his understanding that *there would be no conviction of the crime charged.* While there is little evidence of precisely what advice Mr. Miller gave his client, it is clear that Mr. Wilson was not made to understand the consequences of his actions, either by his counsel or by the trial judge. Mr. Wilson signed the stipulation without understanding and believing, in fact, that agreeing to the arrangement would have a completely different effect. Mr. Miller's failure to insure his client understood the true consequences of a stipulation falls below an objective standard of reasonableness and constitutes

deficient performance.

Mr. Wilson was seriously prejudiced by his counsel's advice. While Mr. Wilson did not receive a prison sentence, he now has a record of a criminal conviction for assault, which he considers a serious blot on his character. The assault conviction was also later used as a bargaining tool by his former wife in the context of their dissolution. Mr. Wilson suffered extreme embarrassment, depression, and a great deal of anxiety due to the guilty finding. Mr. Miller should have advised his client **not** to sign the stipulation, and to proceed with the scheduled jury trial.

In this particular case, advising Mr. Wilson to sign a stipulation was inappropriate, considering his clear insistence on his innocence and his strong desire to maintain a clean record. Further, the attorney should have moved for a dismissal, as the state's witnesses were not present and/or ready for trial. Proceeding to a jury trial would have allowed Mr. Wilson to maintain his innocence, seek dismissal and ultimately clear his name.

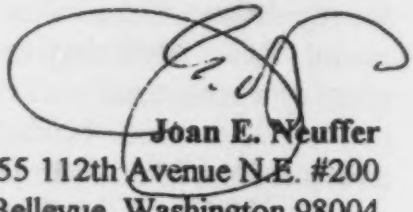
## CONCLUSION

Mr. Wilson was denied his constitutional right of protection under the Sixth Amendment when he entered into the stipulation which resulted in a criminal conviction on his record. In not explaining his rights adequately, Mr. Wilson's attorney's performance fell below the constitutionally permissible standard. Neither was Mr. Wilson provided with an explanation of his rights by the trial judge.

This Court must ensure that the states apply constitutional rights afforded under the Sixth Amendment consistently, specifically when a defendant is making a plea of guilty. These rights must be granted to all defendants when pleading guilty, regardless of whether the plea is made through an *Alford plea* arrangement, or by stipulation to facts contained in a police report.

For these reasons, this Court should grant Mr. Wilson's Petition for Writ of Certiorari, and allow him his day in court.

Respectfully Submitted,



**Joan E. Neuffer**
2155 112th Avenue N.E. #200
Bellevue, Washington 98004
(206) 462-9394
*Counsel of Record*